

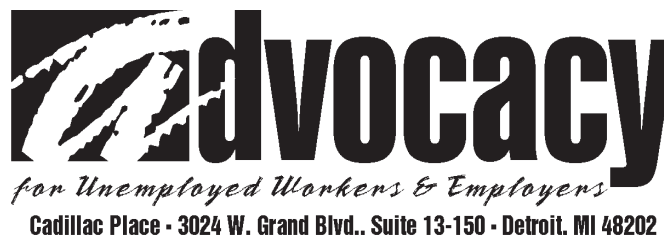
## Preservation of Unused Benefit Entitlement

**What the law says:** This issue is discussed in Section 28a of the *Michigan Employment Security Act*. Generally, this provision allows a worker who is not able to work and is therefore not entitled to collect unemployment benefits, to keep unused base period wages available for use when the worker is again able to work but remains unemployed.

Generally, in order for a worker to be entitled to unemployment benefits, the worker must have worked and had earnings in at least 2 calendar quarters during the first 4 of the last 5 completed calendar quarters, prior to filing a new claim. In the quarter with the highest wages during that period, the worker must have been paid at least \$2,871, and during the entire 4 quarters must have been paid at least 1.5 times the amount earned in the quarter with the highest wages.

A worker is not entitled to unemployment benefits, though, if the worker is not able to work, available for work, seeking work, and satisfying certain other weekly eligibility requirements. If a worker becomes disabled, the worker generally cannot collect unemployment benefits. By allowing a disabled worker to “preserve” unused base period wages, the wages can be used at a later time to qualify for benefits when the worker is again able to work but remains unemployed. This allows the worker to use those wages even though they no longer fall within the base period at the time the claim is filed.

To preserve unused benefit entitlement, the worker must be disabled as a result of an illness, injury, or hospitalization, and the disability must have lasted for at least 14 consecutive days. Also, the worker must request preservation of unused benefit entitlement, and present a doctor's statement, within 90 days after the latest of the following dates: (1) date the disability began; (2) date a medical inability to file the request ended; (3) date the worker was informed by the UIA of the right to file for preservation of unused benefit entitlement.



However, in any event the worker must make the request within 3 years after the disability began.

The doctor's statement must describe the disability, must indicate that the individual is not able to work or available for work while disabled, and must estimate how long the disability is expected to last.

In a case where a claim is already in existence, preserved unused benefit entitlement may not be used to pay benefits more than 156 weeks (3 years) after the week the claim began. Also, the worker cannot use preserved unused benefit entitlement to set up a claim if the worker has enough base period wages to set up a claim without using preserved unused benefit entitlement. Preserved unused benefit entitlement can be used to extend a claim already in existence by the number of weeks the worker was disabled during the claim, up to 52 weeks.

When a claim is not already in existence, preserved unused benefit entitlement can be used to set up a new claim if the worker did not have enough other (non-preserved) base period wages to set up a claim in the usual way.

**Example 1:** An individual who was collecting unemployment benefits became ill and was hospitalized. Her benefit claim period (that is, her 52-week **benefit year**) ran out after she had been in the hospital for 8 weeks. After the hospitalization, the worker was again able to work and was ready to resume drawing unemployment benefits. She did not have enough unused base period wages to set up a new claim, so the unemployed worker was notified by UIA of her right to request “preservation” of unused benefit entitlement from her old claim. She made the request right away and also presented a correctly completed doctor's statement right away. Her old claim period was extended by 8 weeks (the number of weeks of disability that fell in her old benefit year), to allow the worker to draw out the benefits she lost while she was hospitalized. **In this example, preserved unused benefit entitlement was used to extend a benefit claim that was already in existence.**

**Example 2:** Another worker was in the hospital for 3 months, and then spent 6 months at home recovering. During that time, the worker was laid off from his job for lack of work. When he recovered, he did not have enough unused wages in the base period to set up a new claim for benefits. The worker was informed by UIA of his right to preserve unused benefit entitlement, and he made that request right away. He also provided a correctly completed doctor's statement. Since the unemployed worker could not otherwise set up a claim, the claim was established effective the week the disability began, using the unused wages in the base period of the claim. (If necessary, the benefit year will be extended from the end of the period of disability, by the number of weeks of the disability that fell within the benefit year.) **In this example, preserved unused benefit entitlement was used to set up a new claim because the worker did not otherwise have enough base period wages to do so.**

**Example 3:** Another worker had 22 weeks of benefits remaining on an existing claim when she became ill. She remained ill during the remaining 48 weeks of the benefit year, and for the 2 years (104 weeks) after that. Her total period of illness was 152 weeks. When she recovered, the worker requested, on time, to preserve unused benefit entitlement. She also presented, on time, a correctly completed doctor's statement.

Normally, her original claim period (that is, her benefit year) would be extended by 48 weeks (the number of weeks of disability during the original claim period) after the week the disability ended. However, the law says that the original claim period cannot be extended more than 156 weeks from the week it began. That leaves this unemployed worker with only 4 weeks of benefits before her 156-week period expires, rather than the 22 weeks of benefits she was originally entitled to.

**Proof at the hearing:** The burden of proof is on the worker to show that he or she was injured, ill, or hospitalized for at least 14 consecutive days, and to show that the request to preserve unused base period entitlement was made in time.

**For Further Help:** The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.